

**Board of Review  
19 Staniford St., 4<sup>th</sup> Floor  
Boston, MA 02114  
Phone: 617-626-6400  
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.  
Chairman  
Judith M. Neumann, Esq.  
Member  
Charlene A. Stawicki, Esq.  
Member**

**Issue ID: 0019 5918 91**

## **BOARD OF REVIEW DECISION**

### **Introduction and Procedural History of this Appeal**

The claimant appeals a decision by Rorie Brennan, a review examiner of the Department of Unemployment Assistance (DUA), to deny the claimant benefits following his separation from employment on August 11, 2016. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

The claimant resigned from his position with the employer effective August 11, 2016. He filed a claim for unemployment benefits with the DUA, which was denied in a determination issued on December 1, 2016. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by both parties, the review examiner affirmed the agency's initial determination and denied benefits in a decision rendered on January 21, 2017. Benefits were denied after the review examiner determined that the claimant voluntarily left employment without good cause attributable to the employer; without urgent, compelling, and necessitous reasons; and without making reasonable efforts to preserve his employment before quitting and, thus, was disqualified, under G.L. c. 151A, § 25(e)(1). We accepted the claimant's application for review.

### **Ruling of the Board**

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we agree with the review examiner that, while the claimant may have believed that he was going to be discharged, that belief was not reasonable under the circumstances.

The claimant contends on appeal that he had good cause to quit, not only because he was about to be discharged, but also because the job was unsuitable. He also argues that the employer's proposed alternative positions were also unsuitable, because they would not have preserved his job as a manager. Third, he claims further attempts to preserve his job would have been futile.

The record suggests that the claimant may have been unsuited to the managerial position into which he had been promoted, given the claimant's recurring performance difficulties. However, the record also reflects that the employer was working in good faith with the claimant to address his shortcomings, making it premature for the claimant to quit for that reason. In addition, the employer offered the claimant several alternatives, some (but not all) at a lower salary. It is not reasonable for the claimant to effectively concede that he was unsuited to his managerial position but that alternative positions were also unsuitable because they were not managerial in rank or

pay. Leaving that aside, the claimant himself requested to remain employed in one of the positions that he had previously rejected, *i.e.*, relief care staff, which undercuts his contention that such position was unsuitable when offered to him earlier. His subsequent offer to accept that position was not a sufficient attempt at preservation, because it was not only after he had submitted his resignation, but speculative as to starting date, and conditional upon his ability to schedule surgery and attend school.

We, therefore, conclude as a matter of law that the claimant quit without good cause attributable to the employer, without making reasonable attempts to preserve his job before quitting, and without a reasonable belief that he was going to be discharged for non-disqualifying reasons.

The review examiner's decision is affirmed. The claimant is denied benefits for the week ending August 7, 2016, and for subsequent weeks, until such time as he has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times his weekly benefit amount.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 29, 2017**



Paul T. Fitzgerald, Esq.  
Chairman



Charlene A. Stawicki, Esq.  
Member

Member Judith M. Neumann, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT  
COURT OR TO THE BOSTON MUNICIPAL COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

JPC/PF/rh